



Therefore, it contends that the reallocation would result in a preferential arrangement of allotments.

3. Petitioner says that Hampton is not located within any Urbanized Area but is located approximately 8 kilometers south of the southernmost edge of the Atlanta, Georgia, Urbanized Area. It recognizes that the Commission requires parties seeking to relocate a station from a community outside an Urbanized Area to either one within an Urbanized Area or a community from which the station would place a city grade (70 dBu) signal over 50% or more of an Urbanized Area to demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.<sup>1</sup> In this case, petitioner submits a showing that a Hampton station, with maximum Class C1 facilities, will provide coverage to only 17.8 percent of the Urbanized Area. Therefore, it states that a Tuck showing demonstrating the independence of Hampton from Atlanta is not necessary.<sup>2</sup> However, based on the information provided and set forth in paragraph 2, supra, we believe that Hampton would be found to be independent of Atlanta. As a Macon station, Station WPEZ presently provides city-grade service to 100% of both the Macon and Warner Robins, Georgia, Urbanized Areas. If reallocated to Hampton, Station WPEZ would provide service to an additional 1,926,322 people within a 13,120 square kilometer (5,068 square mile) area while 452,266 people would lose service from the station. However, all of the people within the loss area receive a minimum of five fulltime reception services. Therefore, the loss area is considered well-served.

#### Technical Summary

4. Channel 300C1 can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.4 kilometers (12.7 miles) southwest of the community to accommodate petitioner's desired transmitter site.<sup>3</sup> In addition, the proposal must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Powder Springs, Georgia.

5. We believe petitioner's proposal warrants consideration since the reallocation of Channel 300C1 from Macon to Hampton, Georgia, could provide the community with its first local aural service and enable Station WPEZ to increase the population it serves. In accordance with Section 1.420(i) of the Commission's Rules, competing expressions of interest in use of Channel 300C1 at Hampton will not be accepted since the allotment of Channel 300C1 at Hampton is mutually exclusive with its allotment at Macon as the communities are located

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<sup>1</sup> See Change of Community MO&O, supra, and Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

<sup>2</sup> See Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (1951); RKO General, Inc., 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).

<sup>3</sup> The coordinates for Channel 300C1 at Hampton are 33-15-30 North Latitude and 84-26-21 West Longitude.

approximately 99 kilometers apart while the Commission's Rules specify a minimum distance separation of 245 kilometers for co-channel Class C1 allotments.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u> <u>Present</u>	<u>Proposed</u>
Hampton, Georgia	--	300C1
Macon, Georgia	222A, 256C1, 287C1, 300C1	222A, 256C1, 287C1

7 The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8 Interested parties may file comments on or before April 13, 1998, and reply comments on or before April 28, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Irving Gastreund  
Kaye, Scholer, Fierman, Hays & Handler, LLP  
The McPherson Building  
901 Fifteenth Street, N.W.  
Suite 1100  
Washington, D.C. 20005-2327  
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review

by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.